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Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 August 1991]

CONSOLIDATED LIST OF THE SECRETARY-GENERAL OF PROVISIONS IN THE VARIOUS UNITED NATIONS STANDARDS RELATING TO HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE (E/CN.4/Sub.2/1991/26)

1. The Statute of the United Nations International Court of Justice is described in the Charter of the United Nations as "an integral part of the present Charter" (Art. 92). Article 38 of that Statute concerns (a) treaties, (b) "international custom" and (c) "the general principles of law recognized by civilized nations".

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2. Those general principles of law often have been a focus of International Court concerns and, with respect to human rights, have resulted in juridical recognition that the Universal Declaration of Human Rights has achieved the significant status of customary international law.

3. The two preceding paragraphs will remind readers first, that the Charter of the United Nations itself is the supreme United Nations human rights instrument (for instance, see Articles 55 and 76); and second, that the Universal Declaration is merely one of several United Nations instruments which contain provisions that indeed have become "general principles of law recognized by civilized nations".

4. Human Rights Advocates suggests that the administration of justice in the world will suffer if Governments are misled by unjustified assumptions that only United Nations "norms" create legal duties and that United Nations "standards" need not be observed. That idea seems to appear, inter alia, in the note by the Secretary-General (E/CN.4/Sub.2/1991/25) regarding the creation of a working group whose task is therein described as that of "investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned". (Emphasis added).

5. Those words imply that United Nations norms (contrasted with United Nations standards) come into effect only when "accepted by the States concerned". That would be an erroneous conclusion because States also, of course, are bound by customary international law, which embodies rules of the Universal Declaration. Analogously, that law also embodies many clauses of the two United Nations Covenants that, like clauses of the Universal Declaration, have become norms even for Governments that have not yet "accepted" those two instruments.